

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Washington, D.C.**

ROAD SPRINKLER FITTERS, UNITED
ASSOCIATION OF JOURNEYMEN AND
APPRENTICES OF THE PLUMBING
AND PIPE FITTING INDUSTRY OF
THE UNITED STATES AND CANADA,
AFL-CIO, LOCAL 669

and

Case 21-CE-374

COSCO FIRE PROTECTION, INC.

and

NATIONAL FIRE SPRINKLER
ASSOCIATION, INC.

Party in Interest

and

FIRETROL PROTECTION SYSTEMS, INC.

Party in Interest

**COUNSEL FOR THE GENERAL COUNSEL'S REPLY BRIEF
TO RESPONDENT'S ANSWERING BRIEF**

Submitted by
Cecelia Valentine
Counsel for the General Counsel
National Labor Relations Board, Region 21
888 S. Figueroa Street, Ninth Floor
Los Angeles, CA 90017
Telephone (213) 894-6145
Facsimile (213) 894-2778
cecelia.valentine@nrlrb.gov

I. Procedural History

The underlying complaint in this matter alleges that Respondent, Road Sprinkler Fitters, United Association of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Local 669, violated Section 8(e) of the Act by entering into and maintaining Addendum C of the 2007-2010 collective-bargaining agreement (herein, 2007-2010 CBA) between the Respondent and the National Fire Sprinkler Association (herein, NFSA). This charge was initially filed by Cosco Fire Protection, Inc. (herein, Cosco), a member of the NFSA and signatory to the 2007-2010 CBA on July 10, 2007.

On November 3, 2008, following a hearing on the above allegations, Administrative Law Judge William G. Kocol (herein, ALJ) issued his decision (herein, ALJD) in the matter. Therein, the ALJ concluded that the Respondent did not violate Section 8(e) by entering into and maintaining this contractual provision, and dismissed the complaint.

On December 19 and 22, 2008, respectively, the General Counsel and Cosco filed Exceptions to the ALJD and the Respondent replied on January 19, 2009, with its Brief in Opposition to Exceptions (herein, Opposition).

The facts in this case are set forth in the General Counsel's Brief to ALJ Kocol and Brief in Support of Exceptions. This Reply Brief serves to address several points contained within Respondent's Opposition.

II. Argument

A. Respondent continues to mischaracterize Addendum C as merely an “authorization card check clause.”

Contrary to the Respondent’s protestations throughout its Opposition and other submissions, Addendum C is an anti-double breasting clause, as previously argued by the General Counsel. While it is true that the language added to former contract Article 3 to create what is now Addendum C includes a card-check neutrality agreement, it also goes far beyond the bounds of such agreements as it immediately preceded by the following language:

“In the event that the Union files, or in the past has filed, a grievance under Article 3 of this or a prior national agreement, and the grievance was not sustained, the Union may proceed under the following procedures with respect to the contractor(s) involved in the grievance:” General Counsel Exhibit 5 at p. 50.¹ The Respondent does not dispute that its 2004 grievance with Cosco (filed under Article 3 of the 2000-2005 collective-bargaining agreement) was the only Article 3 grievance it has ever lost. The new procedures set forth in Addendum C, thus reveal their true character when read in context.

B. Respondent mischaracterizes ALJ Kocol’s decision.

At page 9, footnote 3 of its Opposition, Respondent claims that ALJ Kocol noted at page 5 of the ALJD that “extrinsic facts beyond the four corners of the 2007-2010 national agreement...are irrelevant to the case.” In fact, ALJ Kocol merely noted in a footnote that he precluded litigation of the separate employer status of Cosco and its

¹ References to General Counsel’s exhibits at the hearing will be referred to as “GCX” followed by the exhibit number and page number within the exhibit, as necessary.

sister corporation Firetrol Protection Systems, Inc. because this case concerns only a facial challenge to the legality of a contractual provision.

C. Addendum C makes no reference to unit work to be performed “at the construction site”, making the “construction-industry proviso” inapplicable.

On page 13 of Respondent’s Opposition, it claims that Addendum C, “by its express terms is confined to and “preserves” bargaining unit work to be performed at the construction site...” Addendum C, however, contains no reference whatsoever to “work to be performed at the construction site.” GCX 5 at 50.

D. Heartland does require the “right of control”, but Addendum C does not.

Contrary to Respondent’s discussion at page 15, footnote 5 of its Opposition, the Board in *Heartland Industrial Partners* cited with approval their dissenting colleague’s concession that “Heartland by definition, controls any CBE [controlled business entity] and can require the CBE to “agree to the Union’s demands”.” and upheld the ALJ who found that “...a CBE...became, as a matter of practical reality, a controlled entity....” 348 NLRB 1081, 1085, 1088 (2007). Contrary to the Respondent’s claim at page 13 of its Opposition, the phrase “establish or maintain operations” cannot be read to require the “right of control”, as it does not in any way suggest that one employer has “control” over the labor relations of another employer.

E. The implicit cease doing business object of Addendum C is not entirely hypothetical

Contrary to the Respondent's allegation at page 15 of its Opposition, the General Counsel has never conceded that the "onerous conditions" created by Addendum C which would amount to a cease doing business object are entirely hypothetical. Indeed, the General Counsel has argued before that, unlike the "lengthy chain of contingencies" described in *Heartland*, here, several contingencies have already taken place: Respondent filed a grievance under former Article 3 (claiming that the terms of a previous contract should apply to the non-union employees of a corporate sibling of a signatory employer) and the grievance was not sustained. All that remains is for the Respondent to obtain a card-check majority at any such non-union employer and the related signatory employer will have two options: to force another employer to apply the terms of the 2007-2010 CBA to its workers on pain of violating the contract; or to terminate its business relationship with that entity. Thus, the implicit cease doing business object of Addendum C reveals itself.

F. Respondent's reference to Section 8(f) is a "red herring"

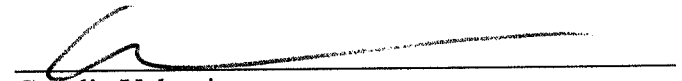
Respondent's reference, in footnote 6 on page 16 of its Opposition to 8(f) agreements appears to serve only to confuse the matters actually at issue in this case. The 2007-2010 CBA is an agreement between Respondent, the 9(a) representative of a unit of workers, and the NFSA, an employer association. The fact that a non-signatory contractor could *voluntarily* choose to enter into an 8(f) agreement with the Respondent with the same terms as the 2007-2010 CBA is irrelevant to this case.

III. Conclusion

The record evidence and Board law establish that the Respondent, in entering into and maintaining Addendum C, violated Section 8(e). The General Counsel respectfully requests that the Board grant the General Counsel's exceptions and enter an order to that effect and order the remedy as previously requested.

DATED AT Los Angeles, California, this 2nd day of February, 2009.

Respectfully submitted,



Cecelia Valentine
Counsel for the General Counsel
National Labor Relations Board, Region 21


STATEMENT OF SERVICE

I hereby certify that our office contacted the following parties by telephone on the 3rd day of February, 2009. We informed each party in this case that the General Counsel's Reply Brief to Respondent's Answering Brief would be submitted by E-Filing to the Executive Secretary of the National Labor Relations Board and that each party would be served with a copy of the same document by electronic mail.

I hereby certify that a copy of the General Counsel's Reply Brief to Respondent's Answering Brief was served by electronic mail to on the 3rd day of February, 2009, on the following parties:

Lester A. Heltzer, Executive Secretary National Labor Relations Board 1099 14 th Street, N.W. Washington, D.C. 20570	William W. Osborne, Jr., Attorney at Law Jason Valtos, Attorney at Law Osborne Law Offices 4301 Connecticut Avenue NW, Suite 108 Washington, DC 20008 bosborne@osbornelaw.com jvaltos@osbornelaw.com
Alan R. Berkowitz, Attorney at Law Bingham McCutcheon LLP Three Embarcadero Center San Francisco, CA 94111 alan.berkowitz@bingham.com	Laurence S. Zakson, Attorney at Law Reich, Adell & Cvitan 3550 Wilshire Boulevard, Suite 2000 Los Angeles, CA 90010-2314 laurencez@rac-law.com
Firetrol Protection Systems, Inc. Michael Westover, Director of Human Resources 400 Garden Oaks Boulevard Houston, TX 77018 mwestover@firetrol.net	John Viniello, President Alexander Gettler, Vice President of Industrial Relations and Director of Human Resources James F. Lynch, Assistant Vice President of Industrial Relations and General Counsel National Fire Sprinkler Association 40 Jon Barrett Road Patterson, NY 12563 viniello@nfsa.org gettler@nfsa.org lynch@nfsa.org

DATED at Los Angeles, California, this 3rd day of February, 2009.


Cecelia Valentine
Counsel for the General Counsel
National Labor Relations Board